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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RAY MUHAMMAD,

Plaintiff and Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION
et al.,

Defendants and Respondents.

A146493

(Contra Costa County
Super. Ct. No. CIVMSC1402087)

BY THE COURT:

This appeal arises from a complaint to quiet title and for various other forms of relief filed by plaintiff Ray Muhammad on November 20, 2014, against defendants U.S. Bank National Association (U.S. Bank) and Mortgage Electronic Registration Systems, Inc. (MERS). In January 2015, plaintiff requested entry of defendants' default, which the clerk entered on January 22, 2015. The defendants tried to file a demurrer on January 27, 2015, but their defaults had already been entered, so on March 11, 2015, defendants moved to quash service of summons, set aside their defaults, and for permission to file their demurrer. On April 7, 2015, the court granted the motion in its entirety.

On October 5, 2015, plaintiff filed a notice of appeal from the April 7, 2015 order. Meanwhile, plaintiff twice amended his complaint in the trial court, defendants successfully demurred each time, and the most recent demurrer was sustained without leave to amend in December 2015. Judgment of dismissal was thereafter entered on or about April 28, 2016, from which plaintiff did not file a notice of appeal.

On September 9, 2016, he filed his opening brief in this pro se appeal. On October 11, 2016, defendants U.S. Bank and MERS filed a motion to dismiss the appeal on grounds that (1) it is an untimely appeal from a nonappealable order, (2) plaintiff's amendments of the complaint opened any default and the appeal has become moot, and (3) plaintiff's omission of MERS as a defendant from his second amended complaint effectively dismissed MERS from the action.

Setting to one side the question of timeliness, insofar as plaintiff appeals from the order setting aside defendants' defaults, it was a nonappealable order. (*Leo v. Dunlap* (1968) 260 Cal.App.2d 24, 25; *Davis v. Taliaferro* (1963) 218 Cal.App.2d 120, 122.) Assuming arguendo the order granting the motion to quash service of summons was appealable, as plaintiff argues, it is nevertheless subject to dismissal as moot. Despite the granting of the motion to quash, the court acquired jurisdiction over the defendants through their general appearance in filing a demurrer. (*Serrano v. Stefan Merli Plastering Co., Inc.* (2008) 162 Cal.App.4th 1014, 1028.) Plaintiff twice amended his complaint, but each time defendants' demurrer was sustained, the last time without leave to amend. The case has proceeded to a judgment of dismissal on April 28, 2016, and plaintiff did not appeal from the judgment. There is no effectual relief that this court could grant plaintiff, even assuming the motion to quash was improperly granted, as the matter is moot. (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 133–135.)

The motion to dismiss the appeal is granted, and the appeal is ordered dismissed.

RUVOLO, P.J.

We concur:

REARDON, J.

STREETER, J.

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